

## INTERLOCAL AGREEMENT

This Agreement is made and entered into by and between WYUKA CEMETERY, a public charitable corporation (hereinafter referred to as "Wyuka") and the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "City").

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat § 13-801 et seq. (the "Act") of the State of Nebraska provides that two or more public entities may enter into an agreement for joint cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act, and no separate legal or administrative entity is created under this Agreement, and

WHEREAS, the City desires to improve water quality by conserving existing wetlands and ponds which are a significant part of the urban drainage system for reducing and improving water quality. Also the City desires to demonstrate the effectiveness of various water quality Best Management Practices including trash and sediment reduction, and

WHEREAS, Wyuka, by and through the Wyuka Historical Foundation, a Nebraska non-profit corporation and supporting organization to Wyuka ("Foundation") is desirous of putting a trail around the Wyuka Pond adjacent to 'O' Street and making certain other improvements to the surrounding Park and Gardens ("Project") and also for enhancing the longevity and aesthetics of the pond by reducing trash and sediment, and

WHEREAS, the City is required to develop a Public Education & Outreach Program, Public Participation & Involvement Program, and a Post Construction Runoff Program for its National Pollutant Discharge Elimination System program, and

WHEREAS, the City plans to enter into an agreement with Olsson Associates for the design of water quality Best Management Practices, and

WHEREAS, the design and installation of Best Management Practices for water quality at Wyuka Cemetery will provide a demonstration of these best management practices and assist in meeting the objectives of the City's National Pollutant Discharge Elimination System program, and

NOW THEREFORE, in consideration of the above, and the covenants and conditions contained herein, the parties agree as follows:

1. Design of Best Management Practices for Water Quality. The City and Wyuka agree to cause the design, installation and maintenance of water quality Best Management Practices consisting of a sediment forebay and trash racks (hereinafter referred to as "Improvements") for the Wyuka Cemetery Pond adjacent to 'O' Street to be constructed as a part of the Project.
2. Cost Responsibility, Design. The City shall be responsible for the design costs of the Improvements listed in Paragraph 1 above at an estimated cost of \$10,052.

3. Cost Responsibility, Construction. Depending upon acceptability of the design by Wyuka, available grant funding for the project, and available funding from the City, the City shall proceed with construction of the Improvements at its sole cost and expense (which may include funding from grants).
4. Maintenance Responsibility. After installation of the Improvements, Wyuka shall only be responsible for the reasonable maintenance of the Improvements, including removal of debris and replacement of plants. Should repair or replacement of damaged or deteriorated Improvements become necessary, Wyuka shall notify the City but neither party shall have any obligation for the costs of repair or replacement. Wyuka agrees to reasonably maintain the Improvements so long as it is reasonable to do so.
5. Purchase and Construction of the Improvements. If the Improvements are to be constructed, Wyuka shall solicit a bid from the contractor(s) for the Project for the purchase and installation of the Improvements. Wyuka agrees to coordinate construction of the Improvements with the Project and to the extent feasible, have the Project supervisor act as contract administrator for the purchase and installation of the Improvements. Wyuka will use its best efforts to coordinate and seek comments and approval from the City.
6. Time Frame. The parties agree to use their best efforts to complete design and construction of the Improvements by July 30, 2011.
7. Future Ownership of Improvements. Upon the completion of installation, the Improvements shall become the property of Wyuka and by this agreement the City does hereby grant, bargain, sell and convey the same to Wyuka.
8. Termination. Either party may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the terminating party. In the event of unavailability of funds to pay any amounts due or perform obligations under this Agreement, the non-performing party shall immediately notify the other party and this Agreement shall terminate without penalty or expense. Either party has the right to terminate this Agreement for any reason upon giving the other party thirty (30) days written notice.
9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.
10. Amendments and Assignment. This Agreement may only be amended or modified in writing signed by all parties to this Agreement. This Agreement may not be assigned without the prior written consent of the other party.
11. Further Assurances. Each party will use its best efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Both parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and

carry out the intent and purposes of this Agreement.

12. Execution in Counterparts. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
13. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.
14. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.
15. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties, other than contractual relationships stated in this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this document by its duly authorized officer this \_\_\_\_ day of \_\_\_\_\_, 2010.

THE CITY OF LINCOLN, NEBRASKA  
A municipal corporation,

\_\_\_\_\_  
Chris Beutler, Mayor

WYUKA CEMETERY

By: \_\_\_\_\_

Title: \_\_\_\_\_